

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
AUGUST 27, 2008**

CALL TO ORDER A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gene Dziza, Mike Mower, Jim Heim, Marc Pitman, Frank DeKort and Randy Toavs. Rita Hall and Gordon Cross had excused absences. Andrew Hagemeyer and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 17 people in the audience.

APPROVAL OF MINUTES No minutes were approved at this meeting.

PUBLIC COMMENT
(not related to agenda items)

None.

CANYON CREEK RANCH (FPP-08-13) A request by Canyon Creek Ranch Estates, LLC for Preliminary Plat approval of Canyon Creek Ranch, an eleven lot single-family residential subdivision on 388.343 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located on Rogers Lake Road.

STAFF REPORT Andrew Hagemeyer reviewed Staff Report FPP 08-13 for the Board.

BOARD QUESTIONS Hickey-Au Claire asked about the amount to be paved being inconsistent in the staff report and the Environmental Assessment.

Hagemeyer said in the EA they miscalculated. He pointed the road out on the map and said they didn't follow the formula correctly. He explained the applicant measured from the pavement of Rogers Lake Road to the end of the property. Staff only measured to the last access to the property because theoretically, they are not impacting at all past that point.

Hickey-Au Claire pointed out the letter from the Montana Historical Society and said it was the first time she had seen a comment from them.

Hagemeyer said they had not done an inventory in that area. He didn't know if they'd follow up on that.

Harris said if the state historic preservation office indicates they haven't inventoried an area it's typically because they have inventoried something close by and they found something. They don't release where those archeological sites are otherwise they wouldn't be there

the next day. If they feel that there is a probability, perhaps some cultural site in the area, they would certainly say that. If the board feels that is a consideration they could condition it. This is in proximity to some rock art along Highway 2 and may have some historic or even prehistoric value.

APPLICANT PRESENTATION

Eric Mulcahy, of Sands Surveying represented the applicants. He handed out a 3-D model for the board to look at. They have a fairly large tract of land and are proposing 11 lots with 35-acres average density. The applicants have been working on the site thinning the property primarily for defensible space and essentially reducing the fire risk within the property boundaries. They have built the driveways, as shown on the preliminary plat, for access to the areas for thinning. The area on the north side of the tract where the existing road is, actually accesses an old rock quarry that Plum Creek had been granted a permit for. The applicants have since reclaimed the area. Regarding comments about dust mitigation on Rogers Lake Road, they are following the county regulations. The developer will pave at least that much, but most likely more. In regards to the DEQ information provided, they did place a number of test holes on each lot and the environmental consultant did run the calculations for those sites and they do meet the subdivision standards of DEQ even though they do not have to go through the process. They did site the homes in areas they felt would limit damage, or potentially impact the wetlands area. They went through the expense to bring Oasis onto the property to do the wetlands delineation. They are in agreement with the findings-of-fact and the conditions in place. However, they are concerned about the 'no further subdivision' condition. They would rather not have that condition because there are a couple of larger lots that could potentially be split again. They looked at the Rogers Lake Zoning District, the closest zoning district to this proposal, and felt the 20-acre minimum lot size was appropriate. They would prefer nothing less than 20-acres.

BOARD QUESTIONS

Pitman asked if they drilled any wells out there.

Mulcahey said no but they tested wells in the area for quality and quantity.

Pitman asked if he knew where the nearest well was.

Mulcahy said there is one well at the farmhouse up the road and another well just over the hill on property near the Ashley Creek area. There is nothing onsite in the area mostly corporate timber, state lands or forestry in close proximity.

DeKort asked if there was a creek running through the property.

Mulcahey said there is a creek shown on the plat, Porter Creek, it originates to the south and flows through the wetland, then forms the

creek again and eventually dumps into Ashley Creek.

DeKort asked how many culverts and/or bridges they are proposing.

Mulcahey said they only show one crossing of the creek and drainage on lot nine. The 310 permit has been issued for that crossing.

Hickey-Au Claire wanted to know how lots 8-11 could be subdivided with the wetlands there.

Mulcahy said he didn't feel those could be split again. Lots two through six have the most potential for a split but nothing east of Rogers Lake Road because of the wetlands.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENTS**

Rod Gillman, 1385 Rogers Lane, spoke of his letter he had submitted for the board. He wanted to reiterate his concerns. The possibility of further subdivision is a real issue to the neighbors. Rogers Lake is a very shallow lake, 20 feet at the most, and that is why it is affected by the dust and the weather conditions as much as it is. Thirty percent more travel and people coming to use the lake would be 30 percent more dust and so forth. By splitting it into even more smaller lots, creating more homes and traffic the dust would increase as well. He felt very strongly if this were to be approved, he would hope no further subdivision would be allowed. He questioned the wisdom of paving a section of the road when you come off of pavement and drive for about a mile then go back onto pavement for about a mile or less and then back off pavement. It doesn't make a whole lot of sense driving on and off the pavement. His letter stated his concerns.

David Walsh, 1775 Rogers Lake Road, had 2 main concerns. The first concern was whether or not any information had been obtained about the aquifer and will this subdivision affect the aquifer. Everyone up at Rogers Lake have anywhere from 200 to 500 or 600 foot wells. There had been no testing and no well drilling had been done and whether or not this subdivision would affect the aquifer or not was another question. He agreed with the previous speaker regarding the dust and the road and how it will affect not only the lake but the wetlands as well. They are very delicate. He spoke of hunting and fishing in the area and stated more studies needed to be done. He was not opposed to the subdivision but he was concerned.

Frank Schneider Jr., 1739, 1743 and 1755 Rogers Lake Road, spoke of picking up 975 dead fish last year. He was concerned the studies had not been done to protect the public. He spoke of the dust in the area and showed photos of the property and the dust associated with them. He wondered what the impact on wildlife would be because of this subdivision. He is not opposed to development but he would like the

studies done in regards to the impacts on Rogers Lake. He asked the board to suspend the approval and extend some kind of study regarding the impacts to the wildlife, the water and the residents regarding his concerns about the dust. They live in a very sensitive area.

Dziza asked about the dead fish and what time of year it had happened.

Schneider said it happened in July.

Dziza asked if anybody had determined a cause.

Schneider said there was no written cause. He was told it was water degradation and lack of oxygen. They had Fish and Game out there and the Basin Commission as well. Those agencies said dust is a major deterrent to the water quality.

Pitman asked if they did a study.

Schneider said he thought the Basin Commission had but he doesn't know as he hadn't seen one. They do water quality testing and they have volunteers that do water quality testing as well. He reiterated he wanted studies done in regards to the impacts to the lake and the wildlife. He was also concerned about fire. He spoke of the lake being split between two fire districts, Smith Valley Fire Department and Marion Fire Department. He gave an example and said the residents had to put out a fire before any engines showed up as they were arguing over whose jurisdiction it was. Please require some kind of study regarding impacts and protect our health.

Dziza asked how many people are in the homeowners association.

Schneider said approximately 60 all the way around the lake and it does include state land leases. No one can answer the question what is killing the lake. He asked the board to make the applicants do more studies.

Frank Hanson, 1423 Rogers Lane, submitted a letter to the board and wanted to add a few additional comments. There are some inconsistencies in the staff report he wanted clarified. He was very concerned about the transition between paved roads and gravel roads and that is a safety issue which should be addressed. The vegetative buffer is inadequate. It doesn't give enough protection. Most of the wildlife habitat has already been removed because of all the preparation for this development. He understood there were some issues about road ownership and he wondered how it could take place without public input.

Jim Rice, 1431 Rogers Lake Road, he and his wife have lived there five years and noticed an increase in the number of people that recreate in the area. Law enforcement up there is absolutely nothing. He gave examples of calls he had made in the past and gotten no response. He spoke of fires being started on the far side of the lake, again there had been no response. There are lots of animals out there and he felt the wildlife had more right to this land than people. He was concerned about enforcement in the area and the dust. He was not opposed to development but wants to keep it reasonable. The county commissioners have ignored the issue of dust, there isn't any dust abatement. There is a lot of frustration and he agreed with his neighbors. He would like to see some real sound decision making as far as the subdivision. In regards to the water issues, he has a 350 foot deep well and they get six gallons per minute. There is not a real strong aquifer up there. He asked for some reality check on this and some good reasoning. Expansion and growth is not a bad thing but we have to do it in a responsible way. This is some beautiful country out there and they would like to keep it that way.

**APPLICANT
REBUTTAL**

Mulcahy stated the developer is trying to do a subdivision as sensitive as he can and that is the reason they have such large lots. The developer definitely wants to protect Rogers Lake and the wonderful fisheries as much as the people who live around the lake and cherish it. He thought what the developer had proposed should not impact the lake. They are downgrading and are not even in the same drainage as Rogers Lake. Regarding the fish kill, he thought he read it was thermally related. He gave examples of rivers that had been closed last year and fish dying due to the very hot weather. Regarding the paving, they are complying with the county standards and will protect the wetlands from road dust as best they can. He addressed the remark deeded vs. easement; essentially the county by state law is not allowed to own or have deed to a road; only the cities have that authority although, they are required to convert the deeded right-of-way to an easement. It is still a public easement for development and maintenance. They did a Traffic Impact Study (TIS) on the project. He felt the traffic from this subdivision would not head south to Rogers Lake but would head north to Highway 2 to go to town. Not a significant portion of the traffic would head south to the lake. They have no plans to bring in a 100 lot subdivision, it's a rumor. He spoke of no further subdivision and said if the board feels that is the way to go they would comply with that.

Dziza asked how far the subdivision is from the lake.

About a mile north of the lake as the crow flies.

Hagemeier said he measured out the length of the road and pointed it out on the map. The lake is 7900 feet from the southern property boundary.

**STAFF
REBUTTAL**

Hagemeier pointed out information in the staff report that people had been confused about. What staff was saying was right now the area is un-zoned and if someday it does become zoned, there would hopefully be an analysis of what type of zoning would best fit that property. The zoning would then set the density that is appropriate for the area. Basically what we are doing is we are allowing zoning to come in sometime in the future. The county is going to keep the road it is not going to the developer. Maintenance of the road would be with the county.

Toavs asked about studies for the lake. Had there been an official study.

Hagemeier said there might be something in the Rogers Lake Neighborhood Plan. He read they had done some testing but he had no idea if official testing had been done. Honestly it would be really hard to prove a nexus between this subdivision and Rogers Lake as it is almost 2 miles away. If someone could prove there was a nexus then maybe we could require further testing.

**MOTION TO
ADOPT F.O.F
(As Amended)**

Dziza made a motion seconded by Pitman to adopt Staff Report FPP-08-13 as findings-of-fact.

**SUBSIDIARY
MOTION
(Remove F.O.F #9)**

Hickey-AuClaire made a motion seconded by Heim to remove finding-of-fact #9.

The motion carried by quorum.

**BOARD
DISCUSSION**

Mower wondered if a 50-foot vegetative buffer would be enough. He didn't feel that would mitigate an impact. (finding-of-fact #11)

The board and staff discussed the vegetative buffer vs. setbacks and whether or not there was anything in the regulations requiring a minimum buffer around the wetlands.

DeKort asked about the 'main wetland' and where the others might be.

Hagemeier pointed them out on the map and explained further.

**SUBSIDIARY
MOTION
(Amend F.O.F #5
and F.O.F #11)**

DeKort made a motion seconded by Pitman to amend finding-of-fact #5 and #11 to say '*all wetlands*'.

**ROLL CALL
(Amend F.O.F #5
and F.O.F #11)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

DeKort brought up dust mitigation on the internal subdivision road. The internal road happens to be the county road with driveways coming off of it.

The board and staff discussed the road issue, whether or not Rogers Lake Road would be considered an internal subdivision road, and dust mitigation.

**SUBSIDIARY
MOTION
(Amend F.O.F #6)**

Heim made a motion seconded by Mower to amend finding-of-fact #6 to read: *There will be impacts to air quality since not all of the road within the subdivision is proposed for paving.*

**BOARD
DISCUSSION**

The board discussed the road and dust issues further.

**ROLL CALL
(Amend F.O.F #6)**

On a roll call vote the motion passed unanimously.

**SUBSIDIARY
MOTION
(Amend F.O.F #6)**

DeKort made a motion seconded by Pitman to add an additional sentence to finding-of-fact #6 to read: *Also, the extensive driveway system may contribute to the dust generated in this subdivision.*

**BOARD
DISCUSSION**

Pitman asked if they were going to gravel the driveways.

Mulcahy said they were only roughed in for the logging but they were going to be paved. It's the agreement with the fire department they would build those driveways to a 16-foot graveled surface so they could get their trucks up there. The developer is intending to pave the full mile of the road, from the last driveway to the northern entrance. He disagreed with the finding they are not meeting the dust abatement. The county put up this pro-rata share or proportionate share of pavement to address the dust issue. We are complying with that with the numbers staff put together. The developer, on his own, wants to pave the whole length. He didn't feel this should create a precedence that they are going to pave more than they are required because he would strongly disagree with that.

**ROLL CALL
(Amend F.O.F #6)**

On a roll call vote the motion passed unanimously.

**SUBSIDIARY
MOTION
(Add F.O.F #15)**

Hickey-Au Claire made a motion seconded by Pitman to add finding-of-fact #15 to read: *The Montana State Historical Preservation Office has determined the proposed subdivision site has not been inventoried for cultural resources and has the potential to impact cultural properties. A cultural resource inventory is suggested in order to determine whether or not sites exist and if they will be impacted.*

**BOARD
DISCUSSION**

Harris explained what the process might be for a cultural resource inventory. There are protocols established by the State Historic Preservation Office and a list of qualified professionals able to conduct the inventory. They would go out onsite; there are levels to the

assessment, looking for cultural resources. The applicant would get a list of qualified professional to conduct an inventory and contract with them. They would make the results available to the State Historic Preservation Office first. There is a process involved but essentially the State Historic Preservation Office controls the inventory or the assessment to see whether there are any sites. If so, there is some negotiated mitigation.

The board discussed the history and culture of the area and why a comment had been sent for this particular subdivision and not any other in the past.

The motion passed by quorum.

**BOARD
DISCUSSION**

DeKort spoke of finding-of-fact #14 in regards to Rogers Lake Road being an internal subdivision road. They didn't create an internal subdivision road but there is one.

Harris stated if they were to add a sentence stating Rogers Lake Road might be an internal subdivision road, the variances would not come into play. In staff's opinion, even though Rogers Lake Road passes through the subdivision, it is clearly a collector road. If you look at the way staff and the board handles subdivisions, you pave internal roads and you apply the formula for the road external to the subdivision that approaches the nearest county paved road. What staff is suggesting here is, because of the lot sizes and if the applicant is willing to do no further subdivision on the lots until its zoned, we are asking the applicant to pave his impacted portion and staff is in effect waiving the internal subdivision paving. Staff is asking them to place his mitigated paving inside the subdivision. The applicant is willing to pave the length of the subdivision, that's a pretty fair deal.

**ROLL CALL TO
ADOPT F.O.F**

On a roll call vote the motion passed unanimously.

**MOTION TO
APPROVE
(As Amended)**

Heim made a motion seconded by Pitman to adopt Staff Report FPP-08-13 and recommended approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Heim said if the developer was willing to pave the entire collector road should they add it to the conditions. He had two thoughts on that issue. If the developer is willing to pave the internal road, he also asked for an additional subdividing of at least three lots down to 20 acres. He asked the board how they would feel about letting him divide those lots since he is willing to pave. He would have been satisfied to have the developer pave to the last driveway.

Mower asked how far it was to the end of the subdivision.

Hagemeier said its 825 feet to the end of the southern boundary from the last driveway.

**SUBSIDIARY
MOTION**
*(Amend Condition
#21)*

Heim made a motion seconded by Pitman to amend condition #21 to read: *The applicant shall pave Rogers Lake Road starting at the northern portion of the subdivision paving to the last driveway on the south end of the subdivision.*

ROLL CALL
*(Amend Condition
#21)*

On a roll call vote the motion passed unanimously.

**SUBSIDIARY
MOTION**
*(Amend Condition
#20)*

Heim made a motion seconded by Hickey-Au Claire to amend condition #20 (a) to add: *except for lots two and three which may be subdivided into no less than 20 acre parcels.*

**BOARD
DISCUSSION**

Toavs commented he thought if the board was going to allow that it should be done right now and the subdivision should be platted for that many lots. They would be getting into the road issues and extra driveways. If they add those lots into this right now, as this subdivision is right now it could change the entire road issue. The way it is right now works. If later, zoning changes or even comes to the area, the owner of the lot could make an internal subdivision road like it should be done and go through the process. If they wanted to subdivide in the future they should have done it now. There are too many unanswered questions at this point if we allow him to subdivide it at this time. There was also not a public hearing for that many lots.

The board discussed the condition that states no further subdivision unless zoning allows for it in the future. They also discussed the Rogers Lake Neighborhood Plan and the density it allows. It's staggered, allowing a higher density adjacent to the lake and a lower density off the lake. It starts at five acre parcels on the lake, one area has ten acre parcels and all the rest are 20-acres.

ROLL CALL
*(Amend Condition
#20)*

On a roll call vote the motion failed 5-2 with Dziza and Heim in favor.

**BOARD
DISCUSSION**

Hagemeier stated condition #19 was a mistake he had made on his site visit, thinking they were going to move the building and the road. He later found out they were not doing that so condition #19 is not necessary.

**SUBSIDIARY
MOTION**
*(Remove Condition
#19)*

Hickey-Au Claire made a motion seconded by DeKort to remove condition #19.

The motion passed by quorum.

**SUBSIDIARY
MOTION
(Add Condition
#27)**

Pitman made a motion seconded by Hickey-Au Claire to add condition #27 to read: *A bus stop will be constructed in a location as require by the Superintendent of Schools.*

The motion carried by quorum.

**BOARD
DISCUSSION**

DeKort spoke about condition #18 requiring a vegetative buffer and a no build zone.

Hagemeier stated the last statement on the final plat would be: these areas shall remain in their natural vegetative state. It would be labeled on the plat 'no-build zone', and then there would be that statement.

DeKort said the last statement in (a) says: in its natural vegetative state, which is a vegetative buffer. It's more than a no-build zone. He asked staff what the proposed regulations require for vegetative buffers and no-build zones on creeks.

Harris said it is 60-feet; 50-foot vegetative buffer with a 10-foot setback in addition to that.

Hagemeier clarified on the plat it would be designated no-build zone and then on the statement on the plat it would say: no residence, accessory buildings, or other uses that may increase or aggravate wetland hazards to life, health or welfare, or that may be prohibited by state wetland regulations are permitted in the wetland and no-build zone areas. There is a link between the statement and what's drawn on the plat.

**SUBSIDIARY
MOTION
(Amend Condition
#18)**

DeKort made a motion seconded by Pitman to amend condition #18 to strike 'main continuous' and just have 'the wetlands'.

The motion carried by quorum.

**SUBSIDIARY
MOTION
(Amend Condition
#18)**

DeKort made a motion seconded by Mower to amend condition #18 to change 50-foot buffer to a 100-foot buffer for the wetlands and a 60-foot buffer for Porter Creek.

**BOARD
DISCUSSION**

Mower said these are very large lots and won't hinder the building or development of the lot and it will give some protection to the sensitive areas. He felt it should be 100-feet.

The board discussed the wetlands, the setbacks/buffers, the proposed subdivision regulations and the driveways.

**ROLL CALL
(Amend Condition
#18)**

On a roll call vote the motion passed 6-1 with Dziza dissenting.

**SUBSIDIARY
MOTION
(Add Condition
#28)**

Hickey made a motion seconded by Mower to add condition #28 to read: *The applicant shall conduct a State Historical Preservation Office cultural resource inventory on the proposed subdivision site prior to final plat submittal. Any impacted cultural site shall be adequately mitigated and approved by the State Historical Preservation Office. The report from the State Historical Preservation Office shall be submitted to the Flathead County Planning & Zoning Office with final plat.*

**BOARD
DISCUSSION**

Dziza asked if anyone knew how long the study would take.

Harris said the one he had done for 1400 acres in another county took approximately three weeks from start to finish.

Pitman commented state lands would be doing one in Eureka and the guy is going up there and leaving the same day.

Mower thought as a general rule they have a pretty good idea where these places are.

Hagemeier said as a planner reviewing the final plats when they are submitted, he would want a way to check up on the conditions to make sure the applicants have complied. He suggested the board add a sentence to the condition stating the report be submitted to the Flathead County Planning & Zoning Office at the time of final plat.

**ROLL CALL
(Add Condition
#28)**

On a roll call vote the motion passed unanimously.

Dziza said the developer showed a lot of restraint with the lot sizes. The board doesn't generally see subdivisions with lot sizes this large. He appreciated the restraint the developer showed.

Mower agreed and said they had done a pretty good job. He hoped the board hadn't impacted it too much. He commented that all the complaints and grouching that night were caused by the people doing the complaining not the developer. He encouraged them to get together and try to figure out how to do the remaining half of this thing because half of this thing is going to be taken care of. The 60 people in the homeowners association should get together and figure out how to take that last mile.

Pitman said they should but the state should also be involved as they are the ones leasing the properties and have the park up there. He would encourage them to go to the state.

Dziza said he heard a comment about the county having done nothing to address road dust. The county doesn't have any money to address road dust and although they would love to see all the roads paved where in the heck is the money going to come from.

Pitman commented having managed the county road superintendent he saw this coming in about 1992 when we were losing our forest dollars. The amount they were getting in revenue from property taxes wasn't offsetting that. PILT money came along and let them hang on for a short period of time but that's going to go away. It's not going to get any better folks it's going to get worse until either we end up taxing people to pay for the pavement or people start taking it all on their own. We require the sub divider to do some paving but that's not going to pave everything.

DeKort commented they did not have a dust control plan when they put in all the driveways. He thought this was probably the best the board could do.

**ROLL CALL TO
APPROVE**

On a roll call vote the motion passed unanimously.

**SUBSIDIARY
MOTION
(Amend F.O.F #12)**

Dziza made a motion seconded by Heim to amend finding-of-fact #12 to read: *The applicant has volunteered to pave from the northern boundary of the proposed subdivision to the southern most driveway on Rogers Lake Road.*

The motion carried by quorum.

**SUBSIDIARY
MOTION
(Amend F.O.F #5,
#7 and #11)**

DeKort made a motion seconded by Hickey-Au Claire to amend finding-of-facts #5, #7 and #11 to change them to 60-feet on the creek and 100-feet around the wetlands.

The motion carried by quorum.

OLD BUSINESS

None.

NEW BUSINESS

Harris handed out a packet he had gotten from the 'Condominium Workshop' in Polson the same week for the board to see. He also showed the board a report about the number of family transfer lots that had been created in FY 2008 and then sold. He said the good news is the trend since 2000 has been decreasing in terms of the number of lots sold. We attribute that to abuse in large part. If you look at the last page you'll see the relative percentages decreasing or the lots sold and increasing for the lots maintained by the family. That's a good trend. He thought we were moving in the right direction. Since 2000, one out of every two family transfer lots created has been remarketed. We're still seeing wide scale abuse of family transfers.

Toavs discussed setting a date for the first meeting of the subcommittee (mapping) he is heading up. They will meet Monday, September 8th at 6:00 p.m. in the planning department conference room. (Toavs, Heim, Hickey-AuClaire, Dziza and DeKort)

Harris reminded the board members to register for the MAP conference.

ADJOURNMENT

The meeting was adjourned at approximately 9:00 p.m. on a motion by Hickey-Au Claire seconded by DeKort. The next meeting will be held at 6:00 p.m. on September 10, 2008.

Gordon Cross, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 10/8/08